

U.S. Environmental Protection Agency Region 10 Tribal Coordination and Consultation Policy for the TMDL Program

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Background:

The U.S. Environmental Protection Agency (EPA) consults with and considers the interests of the tribes when engaged in activities that may affect the rights of federally recognized Indian tribes. EPA is directed to coordinate and consult with Indian tribal governments before making decisions or taking a formal action in those circumstances. In the case of Total Maximum Daily Loads (TMDLs), this action would be the issuance of TMDLs by EPA, and the approval by EPA of TMDLs that are issued by the States. The majority of EPA TMDL decisions are approvals of state-issued TMDLs, therefore, when consulting on a state-led TMDL effort, EPA will encourage tribes and the state TMDL developers to work closely together to ensure tribal interests are heard and addressed.

EPA Region 10's working definition of Tribal Consultation is as follows:

“Consultation” means the process of seeking, discussing, and considering the views of federally recognized tribal governments at the earliest time in EPA Region 10's decision-making. Consultation generally means more than simply providing information about what the agency is planning to do and allowing comment. Rather, consultation means respectful, meaningful, and effective two-way communication that works toward a consensus reflecting the concerns of the affected federally recognized tribe(s) before EPA makes its decision or moves forward with its action.

The full EPA Region 10 Tribal Consultation Framework is attached to this document.

General Policy:

The Watershed Restoration Unit (WRU) will coordinate and, when appropriate, consult with federally recognized Indian tribes as part of the process of developing and/or reviewing TMDLs which impact tribal reservations and/or tribal resources that are outside of Indian reservation boundaries (including treaty-protected “usual and accustomed” hunting and fishing areas and subsistence areas under state and federal jurisdiction).

Process for Coordination and Consultation with Tribes:

There are two distinct procedures for identifying the tribal governments whose reservations and resources may be impacted by a TMDL, each of which is discussed below.

EPA's Annual Planning Process

During the WRU's yearly planning process, the EPA state program managers will provide EPA's and the states' list of TMDLs scheduled for development during the next year via hard copy and e-mail to the tribal leadership with a copy to the tribal environmental contacts. Tribes will be asked to identify TMDL actions that they wish to be involved in or note that there are no TMDL actions that interest them. The tribes will be asked to respond to the appropriate WRU state program manager within 30 days. If a tribe identifies a TMDL that they wish to be involved in, the EPA TMDL State program manager will notify the State and/or EPA TMDL project manager. The project manager will follow the process outlined

below to coordinate with the federally recognized Indian tribe.

Individual TMDLs

Upon assignment to a TMDL, each TMDL project manager will review the information gathered during the annual planning process. In addition, the TMDL project manager should assess at the beginning of the TMDL process whether waters addressed by the TMDL:

- 1) flow onto reservation lands, border an Indian reservation, or have direct tributaries which lie within a reservation;
- 2) are located in a watershed which includes reservation lands; or
- 3) include treaty-protected hunting and fishing area and/or subsistence areas under state or federal jurisdiction.

If a Tribe has expressed interest in the TMDL or one of the above conditions exist, the project manager will identify and contact the tribal leaders and environmental contacts. The project manager will work with the Tribe to identify the ways in which the Tribe wishes to be involved in the TMDL process. The project manager will coordinate with the Tribe and the state project manager to facilitate such involvement. At a minimum, the EPA project manager will send a letter to the tribal leader that identifies the TMDL and its schedule; explains EPA's role; and invites tribal participation.

Information Resources:

The WRU will coordinate with EPA Region 10's Tribal Office and the Regional Tribal Operations Committee to obtain the following information:

- " mailing labels and e-mail addresses for the tribal leadership and tribal environmental contacts. The most up-to-date mailing labels can be obtained from Audrey Woodman in the Tribal Office
- " maps of reservation boundaries and "usual and accustomed" hunting and fishing areas and subsistence areas.
- " *RAINS Database* - The RAINS database can overlay reservations boundaries on a map that shows all the 303(d) listed waters for a watershed. If U&A maps are available, these will outline areas that tribes have identified as areas of interest.

Consultation Issue Resolution:

Consistent with the Region 10 Tribal Consultation Framework, should disputes arise between a Tribe and WRU staff as part of the consultation process, the parties will strive to address the matter informally, at the staff level. In the event that staff are unable to resolve a dispute, the issue will be presented to immediate supervisors, who will attempt to resolve the dispute. If the dispute is not resolved, the staffs will present the matter, preferably in writing, to progressively higher levels of management until consensus is reached. For state-lead TMDLs, state input will be sought during the issue resolution process. In the absence of consensus, EPA senior management will make the final decision after consulting with elected leaders of the federally recognized tribe(s).